Doc Code: AP.PRE.REQ

PTO/SB/33 (07-09)
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 24635US01

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on December 28, 2011

Signature /Christopher C. Winslade/

Typed or printed name Christopher C. Winslade

Application Number	Filed
10/791,831	March 4, 2004

First Named Inventor: Daniel Ledermann

Art Unit	Examiner
2423	Jason M. Thomas

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- ☑ attorney or agent of record. Registration number 36,308.
- ☐ attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

/Christopher C. Winslade/
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December 28, 2011
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket № 24635US01)

In the Application of:	)	Confirmation No. 3854
Daniel Ledermann et al.	)	Customer No. 23446
Serial No. 10/791,831	)	**CERTIFICATE OF TRANSMISSION**
Filed: March 4, 2004	)	I hereby certify that this correspondence is being transmitted via EFS-Web to the United States Patent and Trademark Office on: December 28, 2011.
For: SYSTEM FOR RECORDING AND PLAYBACK OF TELEVISION SIGNALS FROM A PLURALITY OF TELEVISION CHANNELS	)	/Christopher C. Winslade/ Christopher C. Winslade Reg. No. 36,308
Examiner: Thomas, Jason M.	)	
Group Art Unit: 2423	)	

PRE-APPEAL BRIEF CONFERENCE REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicant requests review of the final rejection in the above-identified application, stated in the final office action of October 28, 2011 (hereinafter, the "Final Office Action.") No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons set forth below.

REMARKS

The present application includes pending claims 1-3 and 7-14, all of which have been finally rejected under 35 U.S.C. § 103(a). In this regard, claims 1, 2, 11 and 14 stand rejected under § 103(a) for allegedly being unpatentable over Mizutani (U.S. Patent No. 7,003,791; hereinafter "Mizutani,") in view of Christopoulos et al. (U.S. Patent Application Publication No. 2001/0047517; hereinafter "Christopoulos,") Perlman (U.S. Patent Application Publication No. 2002/0184637; hereinafter "Perlman,")

Solomon (U.S. Patent Application Publication No. 2003/0070174; hereinafter "Solomon,") and Paxton et al. (U.S. Patent No. 7,900,231; hereinafter "Paxton.")

Claim 3 stands rejected under § 103(a) for allegedly being unpatentable over Mizutani, in view of Christopoulos, Perlman, Solomon, and Paxton, and further in view of Jones et al. (Canadian Patent No. 2,321,462; hereinafter "Jones.") Claims 7, 8 and 10 stand rejected under § 103(a) for allegedly being unpatentable over Mizutani, in view of Christopoulos, Perlman, Solomon, and Paxton, and further in view of Fingerman et al. (U.S. Patent Application Publication No. 7,143,430; hereinafter "Fingerman.") Claim 9 stands rejected under § 103(a) for allegedly being unpatentable over Mizutani, in view of Christopoulos, Perlman, Solomon, and Paxton, and further in view of Ellis et al. (U.S. Patent Application Publication No. 2003/0149988; hereinafter "Ellis.") Claim 12 stands rejected under § 103(a) for allegedly being unpatentable over Mizutani, in view of Christopoulos, Perlman, Solomon, and Paxton, and further in view of Slotznick (U.S. Patent Application Publication No. 7,058,356; hereinafter "Slotznick.") Claim 13 stands rejected under § 103(a) for allegedly being unpatentable over Mizutani, in view of Christopoulos, Perlman, Solomon, and Paxton, and further in view of Mensch (U.S. Patent Application Publication No. 2002/0133824; hereinafter "Mensch.").

Without conceding that any of Mizutani, Christopoulos, Perlman, Solomon, Paxton, Jones, Fingerman, Ellis, Slotznick, and Mensch would qualify as prior art, or that any combination thereof is valid for purposes of 35 U.S.C. § 103(a), the Applicant respectfully traverses these rejections for at least the reasons previously set forth during prosecution, and at least based on the following remarks.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

I. Rejection of Independent Claim 1

With regard to the rejection of independent claim 1 under U.S.C. § 103(a) for allegedly being unpatentable over the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton, the Applicant submits that the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton does not teach, disclose or suggest all of the limitations recited in the Applicant's claim 1. Specifically, the Applicant submits that the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton does not teach or suggest at least a "playback module configured to generate access right keys based on digital rights management information, after the user sends the digital rights management information to the playback module ... ," as recited by the Applicant's claim 1. The Applicant notes that the Examiner refers for alleged support with respect to this limitation to Paxton, at Figs. 3 and 6; Abstract; col. 2, lines 43-53; col. 5, lines 22-45; col. 13, lines 4-21; and cols. 20-21, lines 55-5 and 51-63 (further arguing that Paxton teaches a "playback system" that is configured to "generate access rights for the subscriber after the user sends DRM information (i.e. subscriber identification information, pin, access code, etc.) to the system for a program that was previously selected and stored by the user at an archive content server in a broadcast system.")

See Final Office Action, at pp. 6-7. Paxton, at col. 5, lines 22-45; col. 13, lines 4-21; and cols. 20-21, lines 55-5 and 51-63, states (in pertinent part):

> Embodiments further allow subscribers (such as the subscriber 54a) to select particular programs for longer-term archival. For example, broadcast service provider 51 or a subscriber (such as subscriber 54a as shown in FIG. 1) may wish to create a longer-term copy of a particular broadcast of the "Evening News". Subscriber 54a may indicate this desire by communicating with - broadcast service provider 51 (e.g., via a set top box or other device as will be discussed further below). A copy of the broadcast may then be stored on a storage device 52 used for longer-term storage of programs. In some embodiments, the copy of the program is associated with information uniquely identifying the subscriber 54a so that the subscriber 54a may be allowed access to the program as desired ...
>
> Timeslip server 3 also includes a playout module 49 to control playout of archived programs. Playout involves locating the start of a requested program and streaming the content off the appropriate storage device to the particular set top box 8 associated with the subscriber who requested the content. A request message submitted from a set top box 8 will include information identifying the particular subscriber making the request (as well as information to allow switching and routing devices 6 to set up a unicast session with the set top box). When a subscriber requests a program, the request is routed to timeslip server 3 through playout module 49 which causes schedule table 41 to be consulted to identify the start point of the requested program ...
>
> [P]rograms may be tagged as ... "Restricted": there are two cases of Restricted access--any current program which is marked as "Restricted" in the availability database and any program broadcast during a watershed or other regulated period. In some embodiments, access to "Restricted" programs is controlled. For example, subscribers may be required to enter a PIN or possess an access code.

The Applicant respectfully disagrees with the Examiner's reliance on Paxton in this regard. Specifically, the Applicant submits that Paxton does not disclose or describe any "**access right keys**" that are associated with the element that the Examiner equates with the Applicant's "playback module"—that is Paxton's playout module 49; nor does Paxton teach the use of any such "**access right keys**" in conjunction with operations of the playout module 49. Initially, the Applicant notes that the information to which the Examiner refers (subscriber identification information, pin, access code, etc.) may, at most, be interpreted as information transmitted by the

subscriber. The Applicant submits, however, that nothing in Paxton teaches or suggests that such transmission constitutes sending of "digital rights management information" by the user to the playback module. More importantly, the Applicant submits that even if we assume, *arguendo*, that this information allegedly constitutes "digital rights management information," which the Applicant does not concede, the Applicant submits that nothing in Paxton teaches corresponding "access right keys" that are (1) based on the user's transmitted information and (2) used in formatting television signals, where the television signals are stored in an associated storage unit and are transmitted to the subscriber in response to request received from the subscriber.

Furthermore, even if we assume, *arguendo*, that Paxton does teach any such "access right keys," which the Applicant does not concede, the Applicant submits that Paxton does not teach or suggest that its alleged "playback module" (playout module 49) "**generate[s]** access right keys **based on** [the] digital rights management information, after the user sends the digital rights management information to the playback module that includes access rights for the program that was previously selected by the user and previously stored at the storage unit," as recited by the Applicant's claim 1. In this regard, the Applicant notes that Paxton does not teach or suggest that its playout module 49 generates *any* information that may reasonably be equated with the Applicant's "access right keys," where that information is generated based on data or messages sent by the users. Specifically, the Applicant submits that Paxton does teach any generation of information based on information or messages received from the users, as evidenced by the Examiner's failure to point to any such teaching. Rather, Paxton simply describes that when a "request message submitted from a [user] ... identifying the particular subscriber making the request" is received, "the request is routed to timeslip server 3 through playout module 49 which causes schedule table 41 to be consulted to identify the start point of the requested program." The Applicant submits that this clearly shows that Paxton does not require or imply any generation of any information that may be equated with the Applicant's "access right keys," or doing so subsequent to reception from users of information that may be equated with the Applicant's "digital rights management information."

Accordingly, based on at least the foregoing arguments, the Applicant submits that the Applicant's claim 1 is not unpatentable over the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton, and that claim 1 should be allowed. Therefore, the Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. § 103(a) be withdrawn. The Applicant also maintains all additional arguments previously made regarding claim 1, and reserves the right to argue additional reasons beyond those set forth herein to support the allowability of the claim 1 should such a need arise.

II. Rejection of Claims 2, 11 and 14

Because claims 2, 11 and 14 depend upon claim 1, they are, consequently, also respectfully submitted to be allowable at least for the reasons stated above with regard

to the rejection of claim 1 under 35 U.S.C. § 103(a). The Applicant also maintains all additional arguments previously made regarding claims 2, 11 and 14; and reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 2, 11 and 14.

III. Rejection of Claims 1, 3, 7-10 and 12-13

Based on at least the foregoing, the Applicant believes the rejection of claim 1 under 35 U.S.C. § 103(a) for allegedly being unpatentable the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton has been overcome. In rejecting claims 1, 3, 7-10 and 12-13, the Examiner cites in addition to the combination of Mizutani, Christopoulos, Perlman, Solomon, and Paxton, at least one of Jones, Fingerman, Ellis, Slotznick, and Mensch. However, because the Examiner does not assert any additional grounds and/or make any additional arguments for rejecting claim 1 under § 103(a) based on Jones, Fingerman, Ellis, Slotznick, and Mensch, and because claims 1, 3, 7-10 and 12-13 depend upon claim 1, they are, consequently, also respectfully submitted to be allowable at least for the reasons stated above with regard to the rejection of claim 1 under 35 U.S.C. § 103(a). The Applicant also maintains all additional arguments previously made regarding claims 1, 3, 7-10 and 12-13; and reserves the right to argue additional reasons beyond those set forth above to support the allowability of claims 1, 3, 7-10 and 12-13.

CONCLUSION

Based on at least the foregoing, the Applicant believes that claims 1-3 and 7-14 are in condition for allowance. If the Examiner has any questions or the Applicant can be of any assistance, the Examiner is invited to contact the undersigned attorney.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

Date: December 28, 2011.

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